

REMARKS

Initially, Applicants contest the final rejection status of the present application. The Examiner justified making the rejection a final rejection by stating, “Applicant’s amendment necessitated the new ground(s) of rejection presented in this Office Action” (see page 14 of the Office Action). The Applicants respectfully submit that this statement is in error. The amendment included with the response dated June 27, 2007, merely clarified what was always there. Specifically, the previous amendments just explicitly stated what the term “elastic article” meant. The term was always defined in the specification to include the limitations now recited in the claims. As the term was always part of the claims and as the meaning of the term has not changed, the amendments could not have necessitated the new rejections, as stated by the Examiner. Accordingly, the Applicants respectfully request that the “final” status of the rejection be reconsidered and withdrawn and the enclosed amendments and arguments be fully considered.

The above amendments are fully supported in the specification as filed. In particular, the “woven or knitted” recitation is supported at page 6, near the middle of the page. The other amendments are to positively recite the treatments steps rather than the permissive “capable of surviving” language previously recited. These changes are supported throughout the specification.

The Examiner has withdrawn the rejections of the claims based on Davis Jr.; the Mopublishing document; Schilit; Mohr Jr.; Tsurata; and Dijiauw. The Applicants sincerely thank the Examiner for withdrawing these rejections.

The Applicants have amended Claim 1 to now affirmatively require the article to be a treated article. As now recited, Claim 1 recites a treated article. The Examiner has characterized the claims reciting these treatments as being product-by-process claims. With regards to such claims, MPEP 2113 states, “Once a product appearing to be substantially identical is found and a 35 USC 102/103 rejection made, the burden shifts to the applicant to show an unobvious difference”. The key here is that the Examiner has not shown a product appearing to be substantially identical, as the treatments are transformational in nature. It is common knowledge that an “acid-washed”, “stoned wash”, “mercerized” or “pre-washed” garment is not the same as a greige fabric. That such processes produce a different product is further supported by the

reference cited by the Examiner, US 6,337,313 to Rodrigues. It is believed that the Examiner would not require proof that a dyed fabric was different than a fabric which had not been dyed, as it would readily be understood that the process of dyeing necessarily results in a product which is different (namely in color) to the original fabric. The recited processes are no less transformational than the process of dyeing. As it is clear from its face that the process results in a different product, the Examiner has not met the initial burden of showing a substantially identical product, and so the burden has not switched to the applicants.

Turning now to the art cited by the Examiner, US 3,396,529 (“Stutz”) teaches the use of a highly twisted multifilament yarn to be used “in lieu of elastomer synthetic stretch yarns” (see column 2, lines 11-12). Thus, it is clear that Stutz does not teach “an olefin fiber that will recover at least about 50% of its stretched length after the first pull and after the fourth pull to 100% strain” as recited in the claims. Moreover, Stutz has no teaching of treating the fabrics via any of the processes now required in the claims. As discussed above, these treatments are known to be transformative, and hence it is clear that the claimed articles are substantially different from those disclosed in Stutz. Accordingly, the Applicants request that the rejections based on Stutz be withdrawn.

The Examiner has also made 102/103 rejections based on WO99/63021 (“Ho”). As previously stated, Ho contains only 3 lines in a 70+ document relating to woven applications and thus it is not surprising that Ho contains no mention of the treatments specified in the claims. As these treatments are transformational in nature, it cannot be fairly said that Ho discloses substantially identical products. Accordingly, the Applicants request that the rejections based on Ho be withdrawn.

The Examiner has also made 102/103 rejections based on US 5,529,830 (“Dutta”). Dutta does not disclose elastic olefin fibers as required in the present claims. Moreover, Dutta does not disclose the treatments specified in the present claims. This is not surprising, as the fabrics of Dutta are laminated with a water impermeable layer such that the treatments would be largely ineffective to the woven fabric protected under the lamination. Accordingly, the Applicants request that the rejections based on Dutta be withdrawn.

The Examiner has also made 102/103 rejections based on US 6,140,442 (“Knight”) (The Examiner cited 5,529,830, but it is believed that the correct reference is US 6,140,442). As in Ho, the Knight reference is primarily concerned with the fiber itself, and not products made from the fiber. There is, however, mention of fabrics although even there, most of the discussion relates to nonwoven fabrics. With such little discussion of the woven fabrics it is not surprising that there is no disclosure or suggestion to subject the fabrics to any of the treatments recited in the claims. As such, this disclosure is also lacking and the Applicants, therefore, courteously request that the rejections based on Knight be withdrawn.

The Examiner has also made 102/103 rejections based on US 6,194,532 (“Maugens”). Maugens is related to Knight, and appears to be identical in its disclosure of woven or knitted fabrics and its lack of any discussion of the various treated fabrics. Thus, for the same reasons as expressed for Knight, the Applicants also courteously request that the rejections based on Maugens be withdrawn.

The Examiner has also made 102/103 rejections based on US 2002/0081423 (“Heffelfinger”). As amended, the claims now require a woven or knitted article. Heffelfinger relates to a film which includes fibers imbedded within. Thus, these materials would not be considered to be woven or knitted. Moreover, there is no discussion of treated articles, as in any of the previously cited references. Thus, it is respectfully submitted that this rejection should also be withdrawn.

The Examiner has also made 103 rejections based on Knight in view of US 6,666,235 (“Chi”). As stated above, Knight has very little disclosure of woven or knitted fabrics and no disclosure of fabrics which have been treated according to one of the methods recited in the present claims. Chi does relate to a woven fabric (namely denim), but does not specify the use of elastic olefin fiber as recited in the claims. It is not apparent why a person of skill in the art would substitute the fibers of Knight into the fabric of Chi other than to reproduce the current invention. Moreover, even if this was done, Chi still does not disclose treated fabrics as recited in the current application. Thus, this rejection should also be withdrawn.

The Examiner has also made 103 rejections based on Knight in view of the April 1994 article in the Daily News Record, “New Polyolefin Fiber Blend Makes Jeans WR and

Quick Drying”. As was the case in Chi, while this article refers to woven materials, it does not disclose elastic fiber, nor does it disclose any of the various treatments listed in the Markush grouping of the claims. In fact, the olefin fiber disclosed in this article is not even a continuous fiber but rather staple fibers. It is not obvious why a person of skill in the art would substitute staple fibers of this article with the continuous fibers of Knight. Accordingly, the rejection based on this article should also be withdrawn.

The Examiner has also made 103 rejections based on Knight in view of the April 1994 article in the Daily News Record, “New Polyolefin Fiber Blend Makes Jeans WR and Quick Drying”, in further view of US 6,337,313 (“Rodrigues”). Rodrigues does not relate to elastic fabric at all and so presumably is being added just to demonstrate that the various treatment processes are not themselves novel. Rodrigues does not answer the question as to why a person of ordinary skill in the art would substitute the nonelastic staple fibers of the Daily News Record article with the continuous elastic fiber of Knight. And, if a person did, it is respectfully submitted that such person would not the combine the treatments of Rodrigues as it is generally believed that such harsh treatments would result in a fabric which was not dimensionally stable (that is the growth would be greater than 20%) and/or would destroy the elasticity of the fiber. Thus, as Rodrigues does not fix the deficiencies of Knight with the Daily News Record article, this rejection too, should be withdrawn.

Therefore, in view of the above amendments and arguments, Applicants believe the pending application is in condition for allowance, and, therefore, courteously request that the Examiner promptly issue a Notice of Allowance.

Dated: 7 February 2008

Respectfully submitted,

Electronic signature: /James T. Hoppe/
James T. Hoppe
Registration No.: 35,899
THE DOW CHEMICAL CO.
2030 Dow Center
Midland, Michigan 48674
(979) 238-9039